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CONTRACTS—STATUTE OF FRAUDS—ORAL RESCISSION OF CONTRACT TO CONVEY LAND.—Defendant, by written contract, agreed to convey real estate to X, payment to be made in installments. After X had made some payments an oral agreement was entered into whereby X surrendered the written contract in consideration of defendant paying back the installments paid. Plaintiff, as administrator of X, brought action, demanding specific performance of the contract or damages. *Held*, the oral agreement rescinded the written agreement to convey land and that it was not such an agreement as under the Statute of Frauds would need to be in writing. *Wangness v. Stephenson* (S. D., 1921), 184 N. W. 362.

The general rule seems to be that if an executory contract is within the Statute of Frauds and is in writing a subsequent oral agreement to rescind the contract is effectual, provided the oral agreement fulfills the requisites of a contract at common law. WILLISTON ON CONTRACTS, Sec. 592. But whether an executory contract creates an "interest" in the land on the part of the buyer and whether a rescission of the contract is such a retransfer as to require a writing is a much disputed question. The court in the principal case follows a line of cases which holds that the oral agreement discharging the written contract need not be in writing. *Morris v. Baron* [1918], A. C. 1 (*semble*); *Wulschner v. Ward*, 115 Ind. 219; *Howard v. Gresham*, 27 Ga. 347; *Morrill v. Colehour*, 82 Ill. 618. But it seems that these courts fail to see that an equitable interest in the land has been created by the contract. It is well settled that a promise to sell an equitable interest in real estate is within the statute. *Ellis v. Hill*, 162 Ill. 557; *Sprague v. Kimball*, 213 Mass. 380; *Tynan v. Warren*, 53 N. J. Eq. 313; *Holmes v. Holmes*, 86 N. C. 205. Thus, a contract to mortgage real estate must be in writing. *Stringfellow v. Ivie*, 73 Ala. 209; *Marshall v. Livermore Water Co.* (Cal.), 5 Pac. 101; *Clabaugh v. Byerly*, 7 Gill (Md.) 354. So, also, courts have held that an assignment of a contract to convey land must be in writing because it creates an equitable ownership in the purchaser. *Connor v. Tipplett*, 57 Miss. 594; *Hackett v. Watts*, 138 Mo. 502; *Meason v. Kaine*, 63 Pa. 335. In the principal case, when the owner contracted to sell his land he parted with sufficient rights of ownership to be called an equitable interest in the land. Therefore, an oral rescission of the contract, thereby restoring the equitable right to him who created it, should be within the statute just the same as if the equitable right had been conveyed. *Barrett v. Durbin*, 106 Ark. 332; *Catlett v. Dougherty*, 21 Ill. App. 116; *Dial v. Crain*, 10 Tex. 444; *Grunow v. Salter*, 118 Mich. 148. See WILLISTON ON CONTRACTS, Sec. 491.

CORPORATIONS—CHARTER AS A CONTRACT BETWEEN THE STATE AND THE CORPORATION.—In the year 1816 the Massachusetts legislature granted a charter to a religious society by a special act, reserving no power of repeal or amendment; nor was there any general law in force at that time reserving to it that power. In 1921 a bill was proposed in the legislature to suspend the charter of the society. Upon its opinion being asked by the Senate, the supreme court *answered* that the bill was in violation of Art. 1, Sec. 10, of the United States Constitution, which declares that "no state shall * * *

pass any * * * law impairing the obligation of contracts." The grant and acceptance of the charter constituted a contract between the commonwealth and the society which the former could not violate. *In re Opinion of the Justices* (Mass., 1921), 131 N. E. 29.

This doctrine was laid down in Massachusetts as early as 1806, in *Wales v. Stetson*, 2 Mass. 143. But by far the leading case on the subject is *Trustees of Dartmouth College v. Woodward* (1819), 4 Wheat. (U. S.) 518, 1 WILGUS CORP. CASES 708, which Chief Justice Waite said had become so imbedded in our jurisprudence as to be "to all intents and purposes part of the Constitution itself." *Stone v. Mississippi*, 101 U. S. 814, 2 WILGUS CORP. CASES 1348. The doctrine, however, has not been free from attack. See *Toledo Bank v. Bond*, 1 Ohio St. 622; *Dow v. Northern Railroad*, 67 N. H. 1. When charters of private corporations were granted by special legislative acts, as in the *Dartmouth College* case, the grant could quite readily be interpreted as giving rise to a contract between the state and the corporation. The act conferring corporate powers is in the nature of an offer on the part of the state which may be revoked at any time before acceptance. *State v. Dawson*, 16 Ind. 40, 1 WILGUS CORP. CASES 412. Upon acceptance, the implied agreement of the corporation to perform the duties imposed upon it is an adequate consideration, and a binding contract is formed. Now, although corporations are formed under general laws, this contract still arises. *Abbott v. The Johnston, etc., Ry. Co.*, 80 N. Y. 27. In most states, as in Massachusetts (R. L. 1902, c. 109, Sec. 3), the power to repeal and amend is now reserved to the legislature by a general law. It becomes a term of the charters, without reference to it, of all corporations subsequently organized. *Thornton v. Marginal Freight Ry. Co.*, 123 Mass. 32. But the charter in the principal case was granted fifteen years before the Massachusetts statute became operative, and a case is presented which is becoming more and more uncommon. The decision shows no tendency on the part of the court to break away from the *Dartmouth College* case, but to adhere strictly to its doctrine. See also 4 MICH. L. JOUR. 251; 4 MICH. L. REV. 306; 7 *ibid.* 64, 201, 591; 9 *ibid.* 225.

CRIMES—CONSPIRACY—INDICTMENT.—In a prosecution for conspiracy to violate the National Prohibition Act, the indictment charged with conspiracy thirty-one named persons, together with divers other persons to the grand jurors unknown. Proffered evidence would have shown that some of the "other persons" were known to the grand jurors. *Held*, there was no error in the rejection of the evidence, since no necessity exists for joining or naming all the conspirators in a single indictment. *United States v. Heitler*, 274 Fed. 401.

A true averment that the names of the other conspirators are to the grand jury unknown has always been held sufficient. *People v. Mather*, 4 Wend. 229; *Cooke v. People*, 231 Ill. 9. But, furthermore, it is never incumbent on the prosecution to charge all who have participated in the unlawful undertaking, *People v. Richards*, 67 Cal. 412; nor is it necessary to allege the names of all the parties to the conspiracy. *State v. Lewis*, 142 N. C. 626;